IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/12/2002

CORAM

THE HON'BLE MR. JUSTICE P. SHANMUGAM
and
THE HON'BLE MR. JUSTICE M. CHOCKALINGAM

Writ Appeal No.808 of 2000
and W.A.Nos. 861, 895, 916, 951, 955,
1435, 1450 and 1988 of 2000
and
Writ Petition Nos.4103 to 4105, 4207 to 4209,
4811, 5170 and 5171 of 2000

Writ Appeal No.808 of 2000 :
1. Asservadham
2. Narasinga Rao
3. D. Hari
4. P. Selvam
5. S. Hemanthkumar
6. K. Maran
7. R. Ravi
8. Arumugam
9. M. Nayagam
10. Gopalakrishnan
11. M. Anbazhagan ... Appellants

-Vs-

The General Manager,
Indian Airlines Limited,
Airlines House,
Chennai-600 027. ... Respondent

PRAYER : Writ Appeal against the order dated 20.4.2000 passed by a learned single Judge of this Court in Writ Petition No.14134 of 1997.

!For Appellants : Mr. S. Sundar
(in W.A. No.808 of 2000)

Mr. P.V.S. Giridhar
(in W.A. No.861 of 2000)

Mr. K.P. Krishna Shetty
(in W.A. No.1435 of 2000)

Mr. K. Palanisamy

(in W.A. No.951 of 2000)

Mr. V. Prakash
(in W.A. Nos.895 & 955 of 2000)

Mr. K.M. Ramesh
(in W.A. No.1450 of 2000)

Mr. M.V. Muralidharan
(in W.A. No.916 of 2000)

Mr. Fredrick Castra
(in W.A. No.1988 of 2000)

Mr. K. Venkataramani
(in W.P. Nos.4103 to 4105, 4811,
4207 to 4209, 5170 5171 of 2000)

^For Respondent : Mr. N.G.R. Prasad (in all the
W.As., W.Ps. and C.M.Ps.)

:J U D G M E N T

P.SHANMUGAM, J.
The subject matter of the appeal relates to question of regularization of casual workers. The learned single Judge upheld the Scheme of the respondent for regularization. Not being satisfied, the workers have filed the above writ appeals.

2. The appellants are working with the respondent Indian Airlines Limited as Class IV Unskilled Casual Workers like, helpers, loaders, peons, etc. They are being engaged casually for a maximum period of ninety days at a stretch in a year. According to the appellants, some of them have been working from 1977 onwards and though there were regular recruitment, the appellants' claims were ignored. By a Notification dated 04.06.1997, the Indian Airlines Limited called for applications from those who worked as casual/part-time/contract basis for a maximum period of ninety days during a period of twelve consecutive months in the last three years for the Post of Helpers. As many of the appellants are not qualified either with regard to the age or educational qualifications etc., they claim that under Section 25-H of the Industrial Disputes Act read with Rule 78 of the Industrial Disputes Rules, they are entitled for re-employment and on that basis, they have filed writ petitions seeking to quash the notification calling for the applications for regular appointments and to direct the respondent to regularize their services. Pending the writ petitions, this Court, by order dated 23.12.1997, directed the respondent to frame a scheme and in pursuant to this order, the Indian Airlines Limited framed a Scheme dated 08.09.1999. In the final hearing, the learned Judge upheld the Scheme and directed the appellants to work out their remedy under that Scheme. Not being satisfied, the above Writ

Appeals have been preferred.

3. M/s. M.Sundar, P.V.S.Giridhar, K.P.Krishna Shetty, K. Palanisamy, V.Prakash, K.M.Ramesh, K.Venkataramani, M.V.Muralidharan and Fredric Castra appearing for the appellants made elaborate submissions on the rights of their services to be regularized and as to how the Scheme is at variance with the direction of the learned Judge and unworkable. Their submissions are summarized as follows :

(i) In the light of continuous engagement of the appellants as casuals, the absorption and regularization in the respective post is not recruitment. It is a de jury recognition accorded for their de facto functioning for more than 240 days;
(ii) Absorption or regularization connotes all the casuals to work for more than 240 days to get themselves automatic empanelled for a permanent service;
(iii) Any empanelment should be kept alive until all of them are absorbed permanently;
(iv) Section 25-H of the Industrial Disputes Act directly confers right to the appellants under law and therefore, they have got a legal right for absorption;
(v) As their work is of a permanent nature, namely, handling of packages, cleaning, etc., subject to fluctuation in demand due to seasonal traffic, the appellants are entitled to be considered for regularization;
(vi) In this case, the respondents are consistently following unfair labour practice of engagement for ninety days to the whimsical likes of the respondents;
(vii) The appellants are entitled to security of service. Their work involves security aspect of the aircraft, airport and citizens, and therefore, the appointment must be secured;
(viii) As per the order dated 23.12.1997, the Scheme has been prepared in reference to the casual workers from the year 1991. However, the direction to furnish the number of workmen who can be gainfully employed in the relevant department in the year 1998 and also the number of casual labourers required in the department, if all the existing vacancies in the grade of helpers are fixed by making regular appointments thereto, are not complied with; and
(ix) The scheme prepared by the Indian Airlines Limited is at variance with the direction of this Court. The clauses in the Scheme regarding minimum educational qualification and selection by a selection committee as per recruitment and promotional rules and the reservation of 50% of the vacancies only are clearly arbitrary and unworkable;
(x) This Court has ample jurisdiction to modify the Scheme.

4. Mr.N.G.R. Prasad, learned senior counsel representing on behalf of the Management supported the order of the learned single Judge. According to him, the learned single Judge has taken a pragmatic view. The appellants who are unskilled casual workers, are engaged depending on the exigencies of the work required in order to maintain the customers' service with the least inconvenience to the travelling public. Apart from this, there occurs temporary or seasonal additional work load. Besides, they have to take care of absenteeism and leave of regular employees in the cadre. The question of

absorption of casual workers was pending without a satisfactory solution. In other Stations, the Indian Airlines has formulated Schemes and they are upheld and are being followed. According to him, there is not much difference between the Scheme proposed at Madras and the Schemes operating at Bombay and Calcutta. He further submits that the respondentIndian Airlines Limited is a commercial Corporation and that they have to effectively compete with private Airlines in the context of liberalized and globalization for their survival. They are no longer monopoly players. They have to keep in tune with their financial and other considerations like the actual requirement, rationalization before creating Posts. In the absence of regular Posts, the appellants have no right. He also submits that they have to consider the recommendation for redeployment of Class IV employees and rationalization of workforce by the Committees constituted for that purpose and the Pay Commission's recommendations. The regularization Scheme, if any, can be feasible only after taking all these things into consideration and with a pragmatic approach. He submits that the Scheme as such is most beneficial to the appellants and no interference is called for with the order of the learned Judge. Any modification can only be for effective implementation of the scheme.

5. We have heard the rival submissions, gone through the records and considered the matter carefully.

6. Three main questions that arise for consideration in the writ appeals are :

(i) whether the appellants have got a legal right for automatic regularization in service?
(ii) whether the respondents are resorting to unfair labour practice? and
(iii) whether the Scheme is workable?

7. It is an admitted fact that all the appellants have been working as casual workers for a maximum period of ninety days in a year. It is also not in dispute that casual workers have been engaged by the respondent throughout the year in rotation. We need not go into the services of those appellants who have worked prior to 1991, as the list as such has been prepared as per the direction of this Court from the year 1991 and the crucial year of 1991 is not in controversy for the purpose of consideration. Besides, it is claimed that the attendance registers are not available prior to 1991.

8. It is stated that there were 2506 casual employees during the period from 1991 to 1997. Among them, there are persons who worked for one day to 622 days, i.e., there are 27 persons worked for one day only and two persons who worked for 622 days. For instance, the persons who worked from 31 to 89 days are 635; between 90 to 179 days are 810; and between 180 to 269 days are 442 and so on. But, it is not in dispute that none of them have worked continuously for more than ninety days in a year and that they were regular recruitment almost yearly, but the appellants were not able to get permanent appointments either because of lack of qualification or that they were not found suitable for the selection.

9. There are no details as to the nature of entry, terms of period of service, nature of employment, terms of termination in reference to each of the employees. Similarly, there are no particulars as to the need of the respective service department wise. While appellants argue that engagement of casual workers regularly even though appellants were given only 90 days' work follows that there are permanent need, the management submits that the need is only seasonal, and to meet the particular need but not of permanent nature.

10. After the insertion clauses (bb) to Section 2(oo) of the Industrial Disputes Act by Amending Act 49/1984 with effect from 18.08.1984 excluding a contractual termination of service from the definition of retrenchment, it would appear that it could never have been the intention of the legislature to make retrenchment synonymous with discharge simpliciter.

11. In Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court ((1990) 3 Supreme Court Cases 682), the Constitution Bench of the Supreme Court, while considering the definition of the word 'retrenchment', has concluded as follows in paragraph 82 :-
"82. Applying the above reasonings, principles and precedents to the definition in Section 2(oo) of the Act, we hold that 'retrenchment' means termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section."

According to the Supreme Court, even though there are apparent incongruities in the provisions of Sections 25F, 25G and 25H of the Act, there is room for a harmonious construction. Their Lordships have observed as follows :-
"In our view, the principle of harmonious construction implies that in a case where there is genuine transfer of an undertaking or genuine closure of an undertaking as contemplated under the above said sections, it would be inconsistent to read into the provision, a right given to the workmen 'deemed to be retrenched' as a right to claim reemployment, as provided under Section 25H. In such cases, as specifically provided in the relevant sections, the workman concerned would only be entitled to notice and compensation in accordance with Section 25H."

Therefore, if there is termination of the service of a workman as a result of the non-renewal of the contract of employment, on the expiry of such contract, they cannot be treated as if they had been retrenched for the purpose of re-employment under Section 25H of the Act. Hence, it cannot be stated that the appellants have got a legal right for automatic continuation of their service.

12. In none of the decisions referred to, the rights of casual workers who have been put in maximum of 80 days work in a year has been considered for the purpose of absorption. In Workmen of American Express International Banking Corporation vs. Management of A.E.I.B. Corpn. (AIR 1986 SUPREME COURT 458), the Supreme Court has dealt with a case of continuous service for not less than one year and the actual employment of 240 days. In State of Haryana and others vs. Piara Singh and Others ((1992) 4 Supreme Court Cases 118), the Supreme Court has dealt with a case of ad hoc employees who have been continuing in service for several years without being

regularized. In Chief Conservator of Forests v. I.M.Kondhare (AIR 1996 SUPREME COURT 2898), a case of 25 workmen who went to the Industrial Court, it was found that they had been admittedly employed by the State for 5 to 6 years and in each year they had worked for period ranging from 100 to 330 days and that there was unfair labour practice.

13. In Dharwad District P.W.D. Literate Daily Wage Employees' Association v. State of Karnataka & Others (1991 (2) L.L.J. 318), the Supreme Court was concerned with 50,000 daily rated or monthly rated employees working for a period of 10 - 20 years without being regularized. In Jacob v. Kerala Water Authority (1991 (2) L.L.J. 65), the Supreme Court has considered the case of employees appointed temporarily under a statutory rule and who were serving with the establishment for long spells with requisite qualification. The Supreme Court held in that case that since they have worked in the posts for reasonably long spells, they are entitled for regularization of their service. In Hindustan Machine Tools vs. M. Rangareddy (2000 (6) Scale 614), the Supreme Court directed framing of a Scheme for the casual workers who had been engaged for long period, subject to the fulfillment of the conditions of eligibility qualification with relaxation of the age prescribed under the rules.

14. In G.B.Pant University of Agriculture & Technology v. State of U.P. ((2000) 7 Supreme Court Cases 109), as against the direction of the Labour Court to regularize 175 employees, the Supreme Court directed to regularize the services of the employees in terms of the award passed by the Labour Court.

15. In J & K Public Service Commission v. DR. Narinder Mohan ((1 994) 2 Supreme Court Cases 630), the Supreme Court has held that continuance of service for some years would not entitle the ad hoc appointees to regularize.

16. In Central Welfare Board v. Anjali Bepari ((1996) 10 Supreme Court Cases 133), where the workers were appointed against casual vacancy for a long period of over three years, the Management was directed to evolve a Scheme.

17. In State of U.P. and others v. Ajay Kumar ((1997) 4 Supreme Court Cases 88), the Supreme Court held that there must exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post, and that daily-wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continues so long as the work exists.

18. In H.K. Vidyarthi & Others. v. State of Bihar & Others (1998 II L.L.J. 29), it has been held that disengagement from service of temporary employees on daily wages cannot be construed as retrenchment.

19. From the above decisions, the following facts emerge :

(i) In most of the cases, temporary workers were engaged continuously

for a long number of years;
(ii) The Industrial Courts have gone into the question of regularization and on facts, holding existence of continuous work, to claim unfair labour practice;
(iii) In the case of large number of casual workers, directions have been given for regularization by framing a Scheme;
(iv) The financial constraints and the practical and pragmatic view and effect of increasing the cadre strength are directed to be taken into account;
(v) The absorption of casual workers would, in all cases, be subject to the fulfillment of the condition of the eligibility with relaxation of the age prescribed under the Rules;
(iv) The general wholesale regularization without conditions should not be made.

20. In Central Bank of India v. S.Satyam ((1996)5 Supreme Court Cases 419), the Supreme Court has dealt with a case of retrenched workmen, who had been employed for short periods from 1974 to 1976. The writ petition has been filed in the year 1982 and it was found that on the ground of latches, they were not entitled to the relief. Their Lordships held that the ordinary meaning of the expression ' retrenched workmen' must relate to the wide meaning of 'retrenchment' given in Section 2(oo). It was further held that the definition under Section 2(oo) would apply in that case. On the facts of the case on hand, unless the matter is gone into by the Industrial Court, it may not be possible to hold it as an unfair labour practice so as to claim the benefit of Section 25H of the Act, ignoring the exclusion clause contained in Section 2(oo) - Exception (bb).

21. The contention raised is that the respondent is resorting to unfair labour practice in engaging casually the permanent vacancy. According to the appellants, when the casual workers are being engaged right from 1979, there must be a permanent need and consequential regularization and that failure to regularize the casuals is unfair labour practice. The said submission fails to take note of the fact that the respondent has been admittedly making regular appointments in the year 1983, 1984, 1986, 1988, 1990, 1991, 1992, 1994 and 1997. It is not clear whether the appellants applied for the regular posts and as to why they did not agitate the failure to recruit them. It is therefore obvious that the appellants either did not succeed in the selection or did not qualify for the selection. The contention on behalf of the Indian Airlines is that they have to maintain casual workers to meet the need exigencies of the work, seasonal demand and additional work load, absenteeism, etc. They are prepared to consider regularization of the casuals engaged from the year 1991 as per the Scheme. Therefore, assuming for the sake of argument that the management have kept casuals from the year 1991, their present stand that they are prepared to go in for a Scheme, would only show their readiness to absorb the casuals. On the facts of this case, we have no materials to conclude that the respondents are resorting to unfair labour practice.

22. Assuming that the appellants herein can be brought under the category of retrenched workmen, they have to work out their remedy as and when

vacancies arise and recruitment takes place and preference being given to those who have been retrenched employees. But the appellants are not prepared to subject themselves to go in for recruitment process, but what they seek is only a regularization. Admittedly, the appellants were initially taken in without following the requirements for permanent service and by that engagement, they won't acquire legal right to dispense with the eligibility qualifications. In State of Haryana's case referred earlier (1993 (2) L.L.J. 937), it has been held that just because in one case a direction was given to regularize employees who have put in one year of service as far as possible and subject to their fulfilling the qualifications, it cannot be held that in each and every case such a direction must follow irrespective of or and taking into account the other relevant circumstances. The relief must be moulded in each case having regard to the facts and circumstances of that case.

23. On the question whether the Scheme is workable, the Counsel for the appellants took conflicting stands. Some of them claimed combined seniority as prepared in the list should be followed and some of them submitted that preference to be given on the basis of number of days worked and the cut of date must be 04th June, 1997, the date of the earlier Notification. It is further submitted that the experience gained as per the interim order should not come to the advantage or disadvantage of the other appellants.

24. In Indian Airlines Ltd. v. samaresh Bhowmick ((1999) 6 Supreme Court Cases 101), the Scheme of regularization of casual employment is upheld. The Scheme as proposed in that case was set out in paragraph No.6 as follows:-

"6. The said Scheme for regularization of all casual employees is extracted below:-

"1. All the casuals irrespective of the fact that their names were borne on any panel or not will be treated on a par provided they have worked for 90 days as casuals during the last three years.

2. Notification will be issued inviting applications from casual employees for the posts of Helpers in Commercial, Engineering, Stores, Ground Support, Catering Canteens and Peons.

3. Age relaxation to the extent of casual employment will be given subject to a maximum age requirement of 40 years for General category, 43 years for OBC and 45 years for SC and ST as on date of the order of the Court.

4. The candidates must fulfill the educational qualification of having passed 8th class from a recognized institution for the post of Helpers in Commercial, Engineering, Stores, Ground Support and Peons.

5. Selections will be made by duly constituted Selection Board as per the Recruitment and Promotion Rules of the Company.

6. Merit lists, category/cadrewise will be prepared and the selected candidates would be offered employment against the vacancies in order of merit.

7. While making appointments, the directives of the Government with regard to reservations will be adhered to.

8. Those who cannot be appointed due to non-availablity of regular vacancies would be given ex gratia payment calculated on the basis of compensation payable under Section 25-F of the Industrial Disputes Act, 1947. However, they will have no claim for re-employment as casuals or otherwise in future.

9. The appointment of the above-mentioned empanelled casual employees, will be subject to their completing all the pre-employment formalities and on being declared medically fit by the Medical Officer of the Company.
10. This will be a one-time exercise only."

The Division Bench of the High Court had directed that the candidates selected as per the Scheme should be considered for present as well future vacancies and they should be regularized first. The Supreme Court while holding that the Scheme could not have been overlooked since the selections will have to be made by duly constituted Selection Board as per the Recruitment and Promotion Rules of the Company and the selection list cannot have operation for more than a period of two years.

25. In the present case, the learned single Judge found that in view of the various clauses of the Scheme, particularly, relaxation of age for certain period keeping 50% of the vacancies for the post of Helpers (Commercial) exclusively for them and agreeing to pay compensation as per Section 25-F of the Industrial Disputes Act to those who do not get absorption, the Scheme formulated has to be approved. The learned Judge also took note of the fact that when a large number of people were continued to be employed on rotation basis and they had accepted their position for quite some time, they cannot claim that all of them should be regularized and that if such direction is issued, it will lead to an impossible state of affairs, when there are no permanent posts also. The learned Judge taking note of the Kelkars Committee's report which has advised ban on recruitment and reduction in work force, observed that any regularization should take note of these facts and that regularization will depend on vacancy position and qualification. In our view, the learned Judge has taken into account both the factual and legal positions and taking a pragmatic approach, upheld the Scheme formulated by the respondent. Hence, we do not find any grounds to interfere with the orders of the learned single Judge.

26. After considering the submissions on either side on the method prescribing the norms in the preparation of the list of casual workers from the year 1991, we are of the view that for the purpose of consideration, a worker should have put in a minimum of 90 days of service in a year from 1991. We find, it is not practical or rational to include even those workers who have put in just a few days of work all these 10 years for the purpose of consideration. It is quite possible, as submitted, many of such persons would have gone to different places or jobs and the unwieldy list would not be practicable for preparation. Excepting this direction to modify the Scheme in this respect, in all other respects, we uphold the Scheme and confirm the judgment of learned single Judge. All these appeals are disposed of accordingly. No costs.

Index : Yes
Internet : Yes

To

1. The General Manager,
Indian Airlines Ltd.,
Airlines House,
Chennai-600 027.

2. The Regional Director,
Airlines House,
Meenambakkam,
Chennai-600 027.

3. The General Manager (Personnel),
Indian Airlines Ltd.,
Airlines House,
Meenambakkam,
Chennai-600 027.

4. The Director (Personnel),
Indian Airlines,
Indian Airlines House,
New Delhi-110 001.

5. The Manager (Personal Services),
Indian Airlines,
Airlines House,
Meenambakkam,
Chennai-600 027.

6. The General Manager (Personnel),
The Management of Indian Airlines Ltd.,
Southern Region,
Airlines House,
Chennai-600 007.

7. The Director (Personnel),
The Management of Indian Airlines Ltd.,
New Delhi-110 001.

8. The Deputy General Manager,
Indian Airlines Head Quarters,
New Delhi-110 001.

9. The Station Manager,
Indian Airlines,
Trichy Road,
Coimbatore-641 018.